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IN THE
COURT OF APPEALS OF INDIANA

JEREMY A. RATLIFF,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A04-0612-CR-732
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause Nos. 20C01-0511-MR-204; 20C01-0511-FB-203

April 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Jeremy A. Ratliff appeals the sentences imposed by the trial court following his convictions for Murder,[1] a felony, and Robbery,[2] a class B felony. Specifically, Ratliff argues that the sentences are inappropriate in light of the nature of the offenses and his character. Finding no error, we affirm the judgment of the trial court.

FACTS

On November 7, 2005, Ratliff went to the house in Elkhart of his sixty-five-year-old neighbor, Dani Reed, and asked to use her telephone. He then pointed a gun at Reed and directed her to get inside of her house. Ultimately, Ratliff told Reed to lie down, and after she did so, he strangled her with a belt, killing her. He took Reed's wedding ring and credit cards and, after leaving the house, he took her vehicle.

Ratliff drove Reed's car to Saleh's, a local convenience store. He asked the clerk for a pack of cigarettes and, as he turned around, Ratliff pointed the gun at him, took the money from the cash register, and left. Ratliff then drove to a shopping mall, where he bought new clothes and threw away the clothes he had been wearing when he killed Reed.

On November 9, 2005, the State charged Ratliff with class B felony robbery and murder.[3] On June 12, 2006, Ratliff pleaded guilty to both charges. The plea agreement provided that sentencing was left to the trial court's discretion and that Ratliff waived any right to have sentencing factors determined by a jury. On August 17, 2006, the trial court

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[1] Ind. Code § 35-42-1-1(1).

[2] I.C. § 35-42-5-1(1).

sentenced Ratliff to twenty years imprisonment for robbery and to sixty-five years imprisonment for murder, with the sentences to be served consecutively. Thus, the aggregate executed sentence imposed by the trial court was eighty-five years imprisonment. Ratliff now appeals.

DISCUSSION AND DECISION

I. Amended Sentencing Statutes

Ratliff argues that the sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character. Before addressing the merits of Ratliff's argument, we observe that on April 25, 2005, the General Assembly amended Indiana's felony sentencing statutes, which now provide that the person convicted is to be sentenced to a term within a range of years, with an "advisory sentence" somewhere between the minimum and maximum terms. See Ind. Code §§ 35-50-2-3 to -7. When determining the sentence to impose on a defendant, the trial court "may consider" certain enumerated aggravating and mitigating circumstances in addition to other matters not listed in the statute. I.C. §§ 35-38-1-7.1(a) to -7.1(c). Furthermore, the legislature provided that a trial court "may impose any sentence that is . . . authorized by statute . . . regardless of the presence or absence of aggravating circumstances or mitigating circumstances." I.C. § 35-38-1-7.1(d) (emphasis added).

Here, Ratliff committed the crimes and was sentenced after the April 2005 amendment of the sentencing statutes; thus, we will apply the amended versions thereof. In examining

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[3] The State filed the two charges under two separate cause numbers; thus, the robbery charge was Cause Number 20C01-0511-FB-203 and the murder charge was Cause Number 20C01-0511-MR-204.

the amended sentencing statutes, we conclude that if a trial court chooses to impose a sentence greater than the advisory term, it is not required to make findings as to the existence of mitigating or aggravating factors. See id. If it does identify aggravators and/or mitigators, however, the trial court must simply state its reasons on the record for choosing the particular sentence that departs from the advisory term. I.C. § 35-38-1-3(3).

Moreover, under the amended sentencing scheme, a defendant may no longer claim that a trial court abused its discretion under statutory guidelines in imposing the sentence. Because we can no longer reverse a sentence because a trial court improperly found and/or weighed aggravating and mitigating circumstances, our review is now confined to an analysis under Indiana Appellate Rule 7(B): "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." We also observe, however, that we are entitled to consider, among other things, aggravating and mitigating factors found—or not found—by the trial court as we conduct a Rule 7(B) review. See, e.g., Prowell v. State, 787 N.E.2d 997, 1005 (Ind. Ct. App. 2003) (considering statutory aggravators and mitigators as part of an analysis of the character of the offender); Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003) (same).

II. Ratliff's Sentences

Turning first to the nature of Ratliff's offenses, he carried a handgun that was illegal for him to possess, robbed and killed his sixty-five-year-old neighbor,[4] used the neighbor's

[4] Notwithstanding Ratliff's argument to the contrary, there is evidence in the record supporting a conclusion that Reed was sixty-five years old at the time of her murder. Tr. p. 46.

car in an armed robbery at a convenience store, and then attempted to conceal his criminal actions by buying new clothes and disposing of the clothes he wore while strangling Reed and robbing the store. At sentencing, the trial court made the following observations:

> . . . Mrs. Reed was more than a neighbor to you. She brought you food, she gave you money, she tried to take care of you. And by your own accounts you said you lived off the kindness of women. She was one of those women.
>
> Mr. Reed also indicated that he was here in this very court performing his civic duty as a juror at the time when his wife was being murdered. That is, in my opinion, a greater than normal impact on this victim's family due to specialized circumstances. . . .
>
> Last year we had 28 jury trials, and one of those jury trials was the one when Mr. Reed was here performing his duties. In that sense, the brutality of this is bad enough; but the fact that one of the victims was here performing his civic duty is almost unbelievable. . . .

Tr. p. 80-81. Thus, Ratliff repaid Reed's kindness and generosity by robbing and killing her while her husband was away from home performing his civic duty as a juror. Ratliff then stole Reed's vehicle and used it in the commission of an armed robbery. We are not inclined to find that Ratliff's sentences are inappropriate in light of the heinous nature of these offenses.

As for Ratliff's character, his prior criminal history includes eight juvenile adjudications,[5] four misdemeanor convictions, and three felony convictions. The trial court included the following observations in its sentencing order:

> 27 separate and distinct sentencing remedies have been tried with this Defendant and all attempts at rehabilitation have been totally unsuccessful and have failed. The Court notes that in this particular situation one cannot say that the system failed the Defendant but rather

[5] Ratliff's argument that we may not consider his prior juvenile adjudications runs contrary to well-settled authority: "[u]nder Indiana's criminal code, juvenile adjudications reflecting a history of criminal behavior may be considered an aggravating circumstance." Williams v. State, 838 N.E.2d 1019, 1021 (Ind. 2005).

> this Defendant failed the system. The Court also notes the Defendant has seven (7) violations of probation. The Court considers this indicative of the Defendant's contempt for court orders. The Court also notes that virtually every time the Defendant was placed on probation he violated the same.

Appellant's App. p. 47-48. It is apparent, therefore, that Ratliff has shown and continues to show a marked disrespect for the judicial system, the laws of our society, and his fellow human beings. Moreover, past attempts at rehabilitation—and there have been many—have been wholly unsuccessful.

Ratliff insists that the trial court should have given more weight to his alleged mental illness and his decision to plead guilty. As to his mental illness, his treating psychologist found that Ratliff may have suffered from post-traumatic stress disorder and may possibly have suffered from depression or bipolar disorder. The psychologist also concluded, however, that Ratliff "likely" exaggerated his symptoms and that Ratliff chooses not to exert self-control rather than being unable to do so. Appellant's App. p. 93, 99, 100-01, 105. The psychologist also concluded that Ratliff's mental illness contributed to the murder only to "some degree . . . ." Id. at 107.

The trial court found Ratliff's mental illness to be a mitigating factor but not a significant one:

> The Court notes [that] the Defendant has . . . never [] completed psychological treatment outlined for him. . . . The Court notes that this Defendant may have attempted to exaggerate his symptoms and accordingly little value can be placed on the findings and test results of [the psychologist] due to the attempts to distort the result by the Defendant. . . . [I]t is clear that he has not benefited from past psychological treatment either because he will not follow the regimen prescribed or he will not take his medication or he will not be compliant. . . . In light of the fact that the test results are unreliable this Court does believe the Defendant suffers from some mental impairment

> of an unknown degree. . . . In light of these facts the Court will recommend the Defendant receive psychiatric treatment while incarcerated but the Court declines to find it to be a substantial mitigating factor.

Id. at 51. Given that Ratliff exaggerated his symptoms, that the psychologist concluded that he chose not to exert self-control rather than being unable to do so, that the psychologist was unable to draw a significant causal link between the mental illness and the crimes herein, and that Ratliff has been historically unwilling to take part in psychological treatment, we find that the trial court properly declined to consider Ratliff's mental illness as a substantial mitigating factor.

Finally, even if the trial court erred in declining to find Ratliff's guilty plea to be a substantial mitigating factor, it was harmless error given the heinous nature of Ratliff's offenses and the litany of his prior convictions and refusals to comply with probation. It is readily apparent that the eighty-five-year aggregate sentence imposed by the trial court is not inappropriate in light of the nature of the offenses and Ratliff's character.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.